

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TYRONE NOEL NUNN,

Case No. 3:23-cv-00571-ART-CLB

Plaintiff,

ORDER

v.

CERT OFFICERS OF ELY STATE
PRISON, et al.,

Defendants.

Plaintiff Tyrone Noel Nunn brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 1-1). On December 6, 2023, this Court ordered Nunn to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before February 9, 2024. (ECF No. 5). The Court warned Nunn that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 5).

Nunn filed a first amended complaint, but he did not file an application to proceed *in forma pauperis* or pay the \$402 filing fee. (ECF No. 6). On February 16, 2024, The Court granted Plaintiff an extension until March 18, 2024, to submit a complete application to proceed *in forma pauperis* or pay the \$402 filing fee. (ECF No. 8). Nunn filed a second amended complaint, but he has still has not filed a fully complete application to proceed *in forma pauperis*, paid the full \$402 filing fee, or requested an extension.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v.*

1 *King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to
2 comply with local rule requiring *pro se* plaintiffs to keep court apprised of
3 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)
4 (dismissal for failure to comply with court order). In determining whether to
5 dismiss an action on one of these grounds, the Court must consider: (1) the
6 public's interest in expeditious resolution of litigation; (2) the Court's need to
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
8 favoring disposition of cases on their merits; and (5) the availability of less drastic
9 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,
10 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th
11 Cir. 1987)).

12 The first two factors, the public's interest in expeditiously resolving this
13 litigation and the Court's interest in managing its docket, weigh in favor of
14 dismissal of Nunn's claims. The third factor, risk of prejudice to defendants, also
15 weighs in favor of dismissal because a presumption of injury arises from the
16 occurrence of unreasonable delay in filing a pleading ordered by the court or
17 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
18 1976). The fourth factor—the public policy favoring disposition of cases on their
19 merits—is greatly outweighed by the factors favoring dismissal.

20 The fifth factor requires the Court to consider whether less drastic
21 alternatives can be used to correct the party's failure that brought about the
22 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,
23 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*
24 the party has disobeyed a court order does not satisfy this factor); *accord*
25 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that
26 “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted
27 pursuit of less drastic alternatives prior to disobedience of the court's order as
28 satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled

1 with the warning of dismissal for failure to comply[,]” have been “eroded” by
2 *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally
3 dismissing a case, but must explore possible and meaningful alternatives.”
4 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action
5 cannot realistically proceed until and unless Nunn either files a fully complete
6 application to proceed *in forma pauperis* or pays the \$402 filing fee for a civil
7 action, the only alternative is to enter a third order setting another deadline. But
8 the reality of repeating two ignored orders is that it often only delays the inevitable
9 and squanders the Court’s finite resources. The circumstances here do not
10 indicate that this case will be an exception: there is no hint that Nunn needs
11 additional time or evidence that he did not receive the Court’s order. Setting a
12 third deadline is not a meaningful alternative given these circumstances. So the
13 fifth factor favors dismissal.

14 **II. CONCLUSION**

15 Having thoroughly considered these dismissal factors, the Court finds that
16 they weigh in favor of dismissal. It is therefore ordered that this action is
17 dismissed without prejudice based on Nunn’s failure to file a fully complete
18 application to proceed *in forma pauperis* or pay the full \$402 filing fee in
19 compliance with this Court’s December 6, 2023, and February 16, 2024, orders.
20 The Clerk of Court is directed to enter judgment accordingly and close this case.
21 No other documents may be filed in this now-closed case. If Nunn wishes to
22 pursue his claims, he must file a complaint in a new case.

23
24 DATED THIS 8th day of May 2024.

25
26 

27 ANNE R. TRAUM
28 UNITED STATES DISTRICT JUDGE